

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 862 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

KESHUBHA SAMATSINH DECD.THRO' HEIRS JIVUBA KESHUBHA & 7

Versus

SHASHIKANT GOVINDJI TRIVEDI

Appearance:

MR SATYEN B RAWAL for Petitioners

NOTICE SERVED BY DS for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/07/98

ORAL JUDGEMENT

This revision is directed under Section 29(2) of
the Bombay Rent Act, 1947 against the appellate judgment
of the lower Appellate Court dated 11.4.1997. Notice was
served upon the respondents, but none has appeared nor

any counsel has been engaged.

2. Learned Counsel for the revisionist has been heard and the Judgment of the lower Appellate Court has been examined.

3. The judgment of the lower Appellate Court shows that even the requisite facts have not been discussed and narrated and findings have been arrived at on mere presumption, conjectures and surmise overlooking the relevant provisions of Order : 32 and Order 23 of the Code of Civil Procedure.

4. Brief facts are that the Suit No.103/87 was filed for declaration that the decree in suit No.2/81 which was passed on the basis of compromise between the plaintiff and the defendants was not binding on the defendants 2 and 3 inasmuch as they were minors on the date of the suit as well as on the date of filing and verification of compromise inasmuch as no guardian of these defendants No.2 and 3 as provided under Order :32 , Rule : 3 C.P.C. was appointed. It was also pleaded that necessary permission of the court for entering into compromise on behalf of the minors was not sought with prayer that the compromise was for the benefit of the minor defendants.

5. The Suit No.103 of 1987, in which earlier compromise decree was challenged, was contested.

6. The Suit was dismissed by the trial Court. Appeal was also dismissed. Hence this revision.

7. First contention of the learned Counsel for the revisionist has been that non-compliance of Order : 32, Rule : 3 C.P.C. has vitiated the compromise decree and the said compromise decree, as against minor defendants No.2 and 3 of Suit No.2 of 1981, has been rendered nullity and as such it is not binding on them. This contention was specifically raised in the lower Appellate Court, but was not at all discussed and answered.

8. Order : 32, Rule : 3 C.P.C. provides that where the defendant is a minor, the Court on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor. Subsequent sub-clauses of clause (3) of Order 32 prescribe the procedure as to how such guardian of minor is to be appointed.

9. It is clear from Order : 32, Rule : 3(1) C.P.C. that it is mandatory for the Court to appoint a guardian

for the minor defendants. The words "shall appoint" are mandatory and not discretionary. If the Court is satisfied that the defendant in a suit is minor it shall appoint a proper person to be guardian of such defendant for defending him. If this is not done then certainly the decree cannot be binding upon the minor. This aspect has not at all been considered by the lower Appellate Court.

10. Likewise if the compromise is filed on behalf of minor defendant in a case where no guardian is appointed then the natural guardian can not by his or her signature bind the minor to the terms of the compromise unless leave of the Court is obtained. The leave of the Court is mandatory even for the guardian appointed by the Court who has to satisfy the Court that such compromise is in the interest of and for the benefit of the minor defendant. This aspect also did not receive the attention of the lower Appellate Court.

11. The lower Appellate Court has casually without reference to the evidence on record observed that it becomes clear in the present case that the appellants had agreed with the mother, i.e. plaintiff No.1, to be the tenant as heir of their father. He then applied Section 5(11)(c) of the Bombay Rent Act. But it is not mentioned in the summary judgment of the lower Appellate Court where was the material before it to conclude that the appellant had agreed with their mother, viz. plaintiff No.1, to treat them as the sole tenant. Such casual judgment cannot be sustained in the eyes of law inasmuch it is not based on evidence on record and it is based on ignoring the material provisions of the C.P.C., viz. Order : 32, Rule : 3 and Order : 23, Rule : 1 C.P.C. There is then no option but to accept the revision, set aside the Judgment and Decree of the Lower Appellate Court and remand the case to the lower Appellate Court for fresh disposal of Appeal in accordance with law and for giving specific findings on the following points :

- (i) Whether there was any material in Suit No.2 of 1981 to come to the conclusion that the minors defendants No.2 and 3 agreed with their mother to treat her to be the only heir of their deceased father and sole tenant ?
- (ii) Whether the defendants No.2 and 3 were minors when Suit No.2/81 was instituted and it was decided in terms of compromise ?
- (iii) Whether non-compliance of Order : 32, Rule : 3

C.P.C. has rendered the compromise decree not binding against the minor defendants 2 and 3 of Suit No.2 of 1981 ?

(iv) Whether the compromise decree in absence of permission from the Court that the compromise was for the benefit of the minors and for their interest is legal, and binding on the minor defendants No.2 and 3 ?

12. The Appeal shall thereafter be decided in accordance with law. Cost of revision shall be borne by the revisionist.

13. During the period the remanded Appeal is decided by the lower Appellate Court the revisionist shall not be dispossessed from the Suit accommodation.

sd/-

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